

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

September 13, 2022

Reed Brodsky
Direct: +1 212.351.5334
Fax: +1 212.351.6235
RBrodsky@gibsondunn.com

VIA ECF

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Brijesh Goel, No. 22-CR-396

Dear Judge Castel:

In advance of the September 14 Pretrial Conference, we write on behalf of our client, Brijesh Goel, to advise the Court of the status of our ongoing review of the discovery and request a briefing schedule with respect to one motion which we have identified (as we continue to evaluate other potential motions). Given the volume of discovery, we would ask the Court to schedule an additional conference in approximately one month so that we have a little more time before advising the Court as to whether there are any additional motions.

Discovery

At the arraignment on July 28, 2022 the Court asked the government about the volume of discovery and when the government anticipated being able to produce it to Mr. Goel. *See* July 28, 2022 Hearing Transcript at 3:13-4:25. Mr. Naftalis stated that the discovery was not enormous, but also apprised the Court that there would be discovery coming from the Securities and Exchange Commission.

On or about August 15, we received the government's first production. On or about August 25, we received the government's second production. In total, the two productions contain over 420,000 files and are over 160 gigabytes in size. It took discovery technicians over a week to extract the productions into a reviewable format. Since then, we have been conducting our review. As this Court anticipated wisely during the first conference, we will need additional time to finish our review before we will be in a position to apprise the Court of any motions we intend to file. While our client had hoped we could talk about scheduling a trial date, my suggestion of doing so during the first conference was premature. In light of the voluminous discovery, we now recognize that additional time is needed for our review before we inform the Court of any motions relating to that discovery.

GIBSON DUNN

The Honorable P. Kevin Castel
September 8, 2022
Page 2

Motion to Quash Trial Subpoenas

At this juncture, we have identified one motion we intend to file. We recently learned that the government served a trial subpoena on Mr. Goel's alma matter, the University of California, Berkeley (the "Subpoena to Berkeley")—commanding the production of "[a]ll transcripts and disciplinary files for Brijesh Goel." The Subpoena to Berkeley requires this third-party university to return and produce the records on September 14, 2022 at 11:00 am, purportedly for a hearing.

In our view, the Subpoena to Berkeley was improperly issued under the Federal Rules of Criminal Procedure. Rule 17 trial subpoenas are issued "only to compel attendance at formal proceedings such as hearings and trials." Wright & Miller, 2 Fed. Prac. & Proc. Crim. § 272 (4th ed.); *see also United States v. La Fuente*, 991 F.2d 1406, 1411 (8th Cir. 1993) (Rule 17 subpoenas are "only for the purpose of compelling the attendance of witness or the production of evidence at formal proceeding, such as grand jury proceedings, preliminary hearings, and trials").

The September 14, 2022 conference is not a trial, hearing, or formal proceeding in which the parties would proffer evidence. At the July 28, 2022 arraignment this Court was clear that the parties were to appear on September 14th for the purpose of "advis[ing] whether there are any motions Mr. Goel wishes to make in this case." July 28, 2022 Hearing Transcript at 10:20-25. As such, we intend to move to quash the Subpoena to Berkeley and any other trial subpoenas served by the government on other parties with a return date of September 14 or any other date, given that no trial or hearing has been scheduled by this Court as of today.

We thank the Court for its time and consideration in this important matter.

Respectfully submitted,

/s/ Reed Brodsky

Reed Brodsky
Gibson, Dunn & Crutcher,
LLP Office: 212-351-5334
Mobile: 917-574-8200
rbrodsky@gibsondunn.com

Adam C. Ford
Ford O'Brien Landy LLP
Office: 212-858-0040
aford@fordobrien.com